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## TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [REDACTED] 1926

No. [REDACTED] 115

THE UNITED STATES OF AMERICA, PETITIONER

vs.

ONE FORD COUPE AUTOMOBILE, NO. 4776501, ALA-  
BAMA LICENSE NO. 10978, GARTH MOTOR COMPANY,  
CLAIMANT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR CERTIORARI FILED MAY 14, 1925  
CERTIORARI GRANTED JUNE 1, 1925

(31189)

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 473

THE UNITED STATES OF AMERICA, PETITIONER

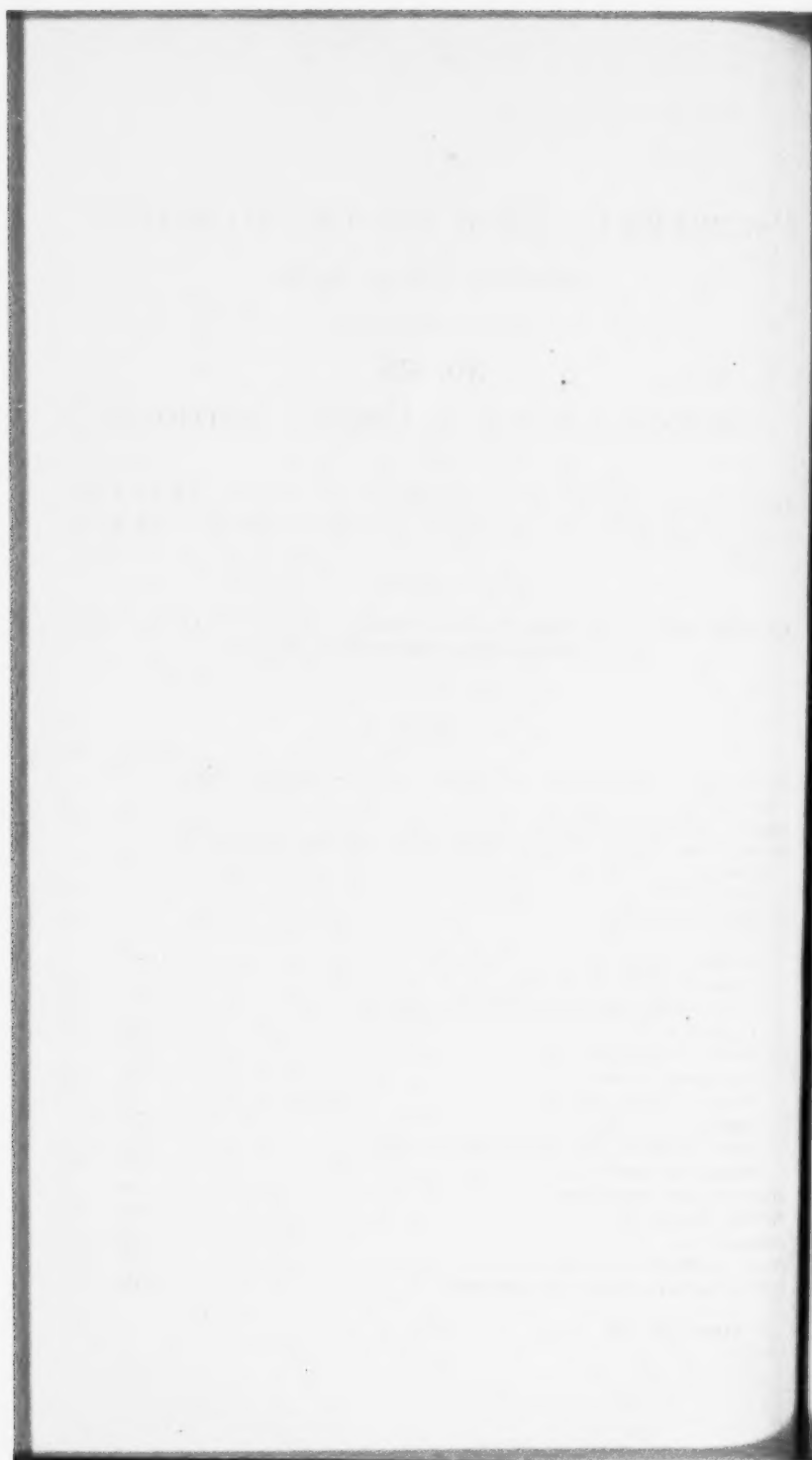
vs.

ONE FORD COUPE AUTOMOBILE, NO. 4776501, ALABAMA  
LICENSE NO. 10978, GARTH MOTOR COMPANY, CLAIM-  
ANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT

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[Caption omitted.]

In United States District Court, Northern District of Alabama  
*Information*

Filed Sept. 18, 1923

Before the Honorable W. I. GRUBB, Judge.

On the eighteen day of September, A. D. 1923, comes C. B. Kenamer, as attorney of the United States for the said Northern District of Alabama, in a case of seizure on land under the internal revenue laws of the United States, and informs the court:

That Edgar N. Read, acting Federal prohibition director for the State of Alabama, heretofore, to wit, on the eleventh day of August, A. D. 1923, on land at Birmingham, in the county of Jefferson, within the Northern District of Alabama, and within the jurisdiction of said court did seize the following described property, automobile, goods, wares, and merchandise, to wit:

One Ford coupe automobile, motor number 4776501, bearing Alabama license number 10978, which said automobile was then and there in the possession and under the control and custody of one Ed L. Killian and being used by him for the purpose of depositing and concealing certain illicit distilled spirits, to wit, twenty-seven quarts of Black and White and rye whiskey, said to belong to Garth Motor Company, a corporation, and now has the same in his custody within the said Northern District of Alabama, as forfeited to the United States for the following causes:

Petitioner avers that on, to wit, August 11th, 1923, at Birmingham, in the county of Jefferson, State of Alabama, and within the jurisdiction of this court, the said automobile aforesaid was then and there being used by the said Ed L. Killian for the purpose of depositing and concealing therein and therewith certain goods and commodities for or in respect whereof the taxes imposed by law had not been paid, to wit, twenty-seven quarts of illicit distilled spirit, to wit, whiskey, with intent then and there to defraud the United States of such taxes aforesaid or some part thereof.

That the said Ed L. Killian, so then and there having the possession and custody of said automobile aforesaid, was then and there using the said automobile for the purpose of depositing and concealing therein and therewith the said whiskey aforesaid, which said automobile then and there contained the said whiskey, and which said automobile was being then and there made use of for the purpose of containing, depositing, and concealing said whiskey, with the intent

and for the purpose of defrauding the United States of certain taxes theretofore imposed by law upon said illicit spirits aforesaid, wherefore this petitioner avers that all the casks, vessels, cases, and packages containing and which had contained such illicit spirits, respectively, and the said automobile aforesaid, and all things then and there used in connection therewith for the deposit and concealment of said illicit spirits, became and are forfeited to the United States under section 3450 of the Revised Statutes of the United States.

Petitioner attaches hereto and makes a part of this information the sworn affidavit and complaint of one R. A. Smith, a Federal prohibition agent for the State of Alabama.

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In United States District Court

*Bill of complaint*

On this 13th day of August, 1923, at Birmingham, Ala., in said district and division, before Chas. J. Allison, for said district, comes R. A. Smith and upon his oath complains and says that Ed L. Killian, residing at 4110 5th Ave. S., Birmingham, on about August 11, 1923, at Birmingham, Ala., in the district and division aforesaid, did commit the following acts, to wit:

(1) Affiant states that said defendant did then and there unlawfully and knowingly manufacture a quantity of intoxicating liquor, to wit:-----otherwise than as authorized in the national prohibition act, that is to say, for intoxicating beverage purposes; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(2) Affiant further states that at said time and place aforesaid, said defendant----herein named unlawfully did knowingly have and possess property, to wit-----

-----designed for the manufacture of intoxicating liquor, to wit, whiskey, otherwise than as authorized by the national prohibition act.

(3) Affiant further states that at said time and place aforesaid, said defendant----herein named unlawfully did knowingly-----

-----then and there contained in-----

-----otherwise than as authorized by the national prohibition act.

(4) Affiant further states that at said time and place aforesaid said defendant---- herein named unlawfully did knowingly have in possession for intoxicating beverage purposes certain intoxicating liquor, to wit, 27 quarts rye whisky of -----, then and there contained in 27 quart bottles, otherwise than as authorized by the national prohibition act.

All of which affiant saith on his oath aforesaid was and is contrary to the form of the statute in such case made and provided, to wit, section 29 of the national prohibition act.

Affiant states that J. P. Clements and R. A. Smith, Birmingham, Ala., are material witnesses to the subject matter of this complaint.

Wherefore, this complainant prays that said defendant---- may be apprehended and further dealt with according to law.

R. A. SMITH.

Subscribed and sworn to before me by the above-named R. A. Smith the day and year first written above.

[SEAL.]

CHAS. J. ALLISON,  
Clerk U. S. Court.

6 And the said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true, and that by reason thereof and by force of the statutes in such case made and provided the aforementioned property, automobile, goods, wares, and merchandise as hereinbefore set forth became and are forfeited to the use of the United States as in said statutes provided.

Wherefore he prays that the usual process and monition of this honorable court may issue in this behalf against the said property, automobile, goods, wares, and merchandise, to enforce the forfeiture thereof, and to give notice to all persons concerned in interest therein to appear and show cause on the return day of said process why such forfeiture should not be decreed and that for the causes aforesaid, and others appearing, the said property, automobile, goods, wares, and merchandise, as hereinbefore set forth, be condemned by the definite sentence and decree of this honorable court as forfeited to the use of the United States, according to the form of the statutes in such cases made and provided.

C. B. KENNAMER,  
*United States District Attorney  
for the Northern District of Alabama.*

Leave granted to file the within, this 18th day of Sept., 1923.

W. I. GRUBB,  
*Dist. Judge.*

7 In United States District Court

In the District Court of the United States for the Southern Division  
of the Northern District of Alabama

UNITED STATES OF AMERICA	} In Equity No. 481
<i>vs.</i>	
ONE FORD COUPE AUTOMOBILE, MOTOR No. 4776501, License No. 10978	

THE UNITED STATES OF AMERICA,  
*Northern District of Alabama.*

*Writ of attachment*

Sept. 18, 1923

Chas. J. Allison, clerk

*The President of the United States of America to the marshal of said district, greeting:*

Whereas a libel has been filed in the District Court of the United States for the Southern Division of the Northern District of Alabama, on the 18th day of September, A. D. 1923, for the reasons

and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in a certain Ford coupe automobile, motor number 4776501, license No. 10978, against which said libel has been filed, may be sighted in general and special to answer the premises and, due proceedings being had, that the said Ford coupe automobile, motor No. 4776501, license No. 10978, may, for the causes in said libel mentioned, be condemned and sold to pay the demands of the United States, same being forfeited to the uses of the United States.

You are hereby commanded to attach the said Ford coupe automobile, motor No. 4776501, license No. 10978, which is now being held by Edgar N. Reed, acting Federal prohibition director for the State of Alabama, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, and especially the Garth Motor Company, a corporation, of Birmingham, Alabama, that they be and appear before the said court, to be held in and for the Southern Division of the Northern District of Alabama on the first day of December, A. D. 1923, at ten o'clock in the forenoon of that day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. W. I. Grubb, judge of the District Court of the United States for the Northern District of Alabama, this the 18th day of September, A. D. 1923.

Issued this 18th day of Sept., A. D. 1923.

[SEAL.]

CHAS. J. ALLISON,

*Clerk, District Court of the United States for the  
Northern District of Alabama.*

I have executed the within writ by handing a copy thereof to R. B. Doe, chief clerk to Edgar N. Reed, acting Federal prohibition director, also by handing a copy of same to M. P. Klyce, the assistant manager of the Ford Livery Co., the place where said automobile is stored, and by seizing and taking into my possession the said automobile herein described.

I have further executed same by publishing value of said seizure by me and of the date set for the hearing through in the Birmingham Age-Herald at least 14 days before said day of hearing, viz, Dec. 1, 1923.

This the 19th day of September, 1923.

THOS. J. KENNAMER,  
*U. S. Marshal.*

By ROBT. A. MORRIS,  
*Deputy.*

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## In United States District Court

*Motion to quash*

Filed December 6, 1923

Now comes the Garth Motor Company, a corporation, duly organized and existing under the laws of the State of Alabama, having its principal place of business at Birmingham, in said State, and intervenes as claimant in this cause and moves to quash the liable, the bases of the suit of the United States in this cause, and as grounds for said motion separately and severally says:

1. Since the enactment of the national prohibition act a suit can not be maintained under Rev. St. 3450 for forfeiture of a vehicle as having been used to remove and conceal distilled spirits  
11 whereon a double tax has been imposed under said prohibition act with intent to defraud the United States of such tax.

2. Provisions of section 3450, Revised Statutes, for forfeiture of any vehicle used in the removal or concealment of a taxable commodity with the intent to defraud the United States of such tax is not applicable to the removal or concealment of intoxicating liquors since the national prohibition act became effective.

3. For that the forfeiture clause of section 3450, Revised Statutes, has been repealed by the national prohibition act.

4. For that sufficient facts are not alleged in said liable, filed by the United States in this cause, to authorize a forfeiture under section 3450 of the Revised Statutes.

5. The liable shows on its face that the person in possession of the said Ford automobile was not attempting to avoid the payment of tax, but on the contrary his intent was to engage in an unlawful business.

6. For that said liable fails to allege with sufficient certainty that the whisky stored in said automobile had been stored there for the purpose of defrauding the Government out of the tax due thereon.

7. For that there is no act of Congress imposing a tax on illicitly made whisky.

8. For that there is no tax imposed and due to the Government on the whisky mentioned in said libel.

WILLIAM S. PRITCHARD,  
*Attorney for Claimant, Garth Motor Company.*

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## In United States District Court

*Claim of Garth Motor Company*

Filed April 14, 1924

STATE OF ALABAMA,  
*Jefferson County.*

Personally appeared before me, the undersigned authority in and for said county, in said State, W. W. Garth, who is personally



known to me, and who, having been first duly sworn by me on oath, deposes and says:

That he is the president of the Garth Motor Company, a corporation, and as such is authorized to make this affidavit; that the title to that certain Ford coupe automobile No. 4776501, which was heretofore on, to wit, August 11th, 1923, seized by the United States Government while in the possession of one Ed Killian and while being used by said Ed Killian in and about the unlawful transportation of intoxicating liquors, is in the said Garth Motor Company; that the title to said automobile is in the said Garth Motor Company under and by virtue of that certain title retaining instrument executed to said Garth Motor Company by one Urton Munn on, to wit, the 19th day of June, 1923, and duly recorded in the office of the probate judge of Jefferson County, Alabama, in volume 1252 of mortgages at page 64; that a copy of said instrument is attached hereto and made a part hereof; that the whole of the indebtedness due the Garth Motor Company, under and by virtue of  
13 said instrument, has not been paid to the Garth Motor Company; and that attached hereto and made a part hereof are copies of the promissory notes, the evidence of said unpaid indebtedness.

W. W. GARTH.

Sworn to and subscribed before me this, the 24th day of August, 1923.

[SEAL.]

J. D. HIGGINS,  
*Notary Public.*

BIRMINGHAM, ALA., 6-19-23.

This agreement certifies that I, Urton Munn, have this day purchased of Garth Motor Co., a corporation, the following property, to wit: One Ford coupe, No. 4776501, at and for the price of two hundred ninety-two dollars & 25/100 (\$292.25), which property I agree to take and pay for upon the following terms and conditions: I agree to pay said Garth Motor Co. for said property said sum of \$292.25 as follows: \$125.00 cash on delivery and the balance in installments of \$41.81 per month until the full purchase price with interest thereon is paid in full, said installments being evidenced by four promissory notes.

I do hereby consent and agree that the title to said property shall remain in and said property shall be and remain the property of said Garth Motor Company until fully paid for as above agreed, and that the execution of said notes or of notes hereafter  
14 evidencing any balance unpaid herein, or of any renewal note, shall not, nor shall the acceptance, negotiation of, suit upon, or judgment rendered thereon, constitute, be, or be held as a waiver or relinquishment by said Garth Motor Company of said property or the title thereto or of any rights vested, created, or retained hereby. I further agree that I will not create, give, or

suffer to attach or be fixed against said property any lien of any kind, and I agree that I have no power or authority, either express or implied, to create or allow to arise or become a charge against said property any mechanic's, laborer's, or material man's lien, or to in any way render said property liable for or permit the same to be liable for or on account of any work upon or for any supplies or material furnished for use upon said property by any person, firm, or corporation other than said Garth Motor Company so long as this agreement remains in force and effect. I further agree that if I fail to pay any installment when due (time being essence of this contract) said Garth Motor Company, its agent or agents, shall have the right and privilege at any time thereafter to enter any premises where said property may be located to seize and take away such property, and I hereby release and waive all claims of every kind that I may have or claim to have growing out of or incident to the taking of said property by said Garth Motor Co., and I agree to forfeit and lose all previous payments made thereon, the same being treated as rents. I further agree to make all back payments in case said property is returned and to keep said property at No.

1900 11th Ave. S., Birmingham, Ala., and not to move the same, except in its use, without the consent of said Garth

Motor Company. The right of exemption to personal property and wages under the constitution and laws of the State of Alabama or any other State of the United States is hereby waived in favor of the payment of this obligation, and the undersigned agree to pay all costs of collection, including a reasonable attorney's fee, and to keep said property insured in a reliable company, in a policy separate from any other property, for an amount of not less than \$167.25 with loss, if any, payable to Garth Motor Company, as its interest may appear, and to pay all premiums and renewals on said policy until the indebtedness herein mentioned is paid in full, said policy to be taken out promptly on receipt of property and delivered to said Garth Motor Co., and that should I fail to do so then in the event of the loss, theft, or destruction of said property I shall remain liable for the full amount of the herein mentioned indebtedness. This constitutes the entire purchase contract, and upon the repossessing of said property or upon the failure of the undersigned to pay promptly said indebtedness all rights of the undersigned hereunder shall cease. No acceptance of any payment or part payment of said indebtedness shall be a relinquishment or impairment of any right of Garth Motor Company hereunder. A failure to pay in full any installment when due shall mature the entire indebtedness and render all installments immediately due and payable.

It is also agreed that in case the purchaser of the herein-described vehicle uses said vehicle or permits same to be used for the transportation of prohibited liquors, wines, or beers that the Garth Motor Company or its assigns shall then have the right to take possession of said vehicle on demand, and all property

or money that may have been paid as part of the purchase price on same shall be considered as liquidated damages and rent for the use of said vehicle. The purchaser agrees that in case of such violation on his part, directly or indirectly, that he or she will surrender the vehicle on request of the Garth Motor Company or its assigns without legal process.

It is further understood and agreed that I shall in no event allow, suffer, or permit the possession of said property to become or remain in any person or persons other than myself, and a breach of this stipulation shall entitle the Garth Motor Company to at once take possession of the said property and to demand payment of all deferred installments whether due or not and to work a forfeiture of previous payments, the same to be treated as rent as aforesaid.

It is further understood and agreed that the Garth Motor Company shall in no wise be bound by any warranty or guaranty made by any agent of said company with reference to said property. I further agree to pay the recording fees on this paper.

Witness my hand and seal this, the 19th day of June, 1923.

Witness:

(Signed by) JOHN W. BAKER.

(Signed by) URTON MUNN. [SEAL.]

17 THE STATE OF ALABAMA,  
*Jefferson County.*

I hereby certify that the within instrument was filed in my office for record July 6, 1923, at ---- o'clock ---- m., and duly recorded in vol. 1252 of mtgs., page 64.

I hereby certify that the record tax to the amount of \$.30 has been paid on this instrument.

(Signed) J. P. STILES,  
*Judge of Probate.*

I hereby certify that the privilege tax required by law to be paid on this instrument was paid by the lender.

Given under my hand this the 6th day of July, 1923.

(Signed) GARTH MOTOR COMPANY.

By H. HIRST.

\$41.81

BIRMINGHAM, ALA., *June 19, 1923.*

On or before August 19, 1923, after date, I, we, or either of us, promise to pay to Garth Motor Company, Incorporated, or order, forty-one & 81/100 ----- dollars, with interest at the rate of 8 per cent per annum, both before and after maturity, and reasonable attorney's fee (if allowed by law), if placed in the hands of an attorney for collection. Value received without any relief whatever from valuation or appraisal laws. The makers, endorsers, sureties, and guarantors severally waive presentment for payment, protest, and notice of protest and nonpayment of this note, and all defenses on account of any extension or extensions of time for pay-

18      ment that may be given to them or any of them by the holder or holders of said note, or any renewal note for whole or part hereof, and do hereby relinquish the benefit of all exemption and insolvency laws.

This note is the second of a series of four notes, bearing even date, and is given in accordance with the terms of a conditional sale contract existing between the same parties.

Negotiable and payable at \_\_\_\_\_ Bank \_\_\_\_\_ (City)  
with exchange on New York or Chicago.  
(Signed) **URTON MUNN.**

\$41.81

BIRMINGHAM, ALA., *June 19, 1923.*

On or before September 19, 1923, after dated, I, we, or either of us promise to pay to Garth Motor Company, Incorporated, or order forty-one & 81/00 ----- dollars, with interest at the rate of 8 per cent per annum, both before and after maturity, and reasonable attorney's fee (if allowed by law), if placed in the hands of an attorney for collection. Value received without any relief whatever from valuation or appraisal laws. The makers, endorsers, sureties, and guarantors severally waive present for payment, protest, and notice of protest and nonpayment of this note, and all defenses on account of any extension or extensions of time for payment that may be given to them or any of them by the holder or holders of said note, or any renewal note for whole or part hereof, and do hereby relinquish the benefit of all exemption and insolvency laws.

This note is the third of a series of four notes, bearing even date, and is given in accordance with the terms of a conditional sale contract existing between the same parties.

Negotiable and payable at ----- Bank -----  
(City)  
with exchange on New York or Chicago.  
(Signed) **URTON MUNN.**

\$41.82.

BIRMINGHAM, ALA., *June 19, 1923.*

On or before October 19, 1923, after date, I, we, or either of us promise to pay to Garth Motor Company, Incorporated, or order forty-one & 82/100 ----- dollars, with interest at the rate of 8 per cent per annum, both before and after maturity, and reasonable attorney's fee (if allowed by law), if placed in the hands of an attorney for collection. Value received without any relief whatever from valuation or appraisement laws. The makers, endorsers, sureties, and guarantors severally waive presentment for payment, protest, and notice of protest and nonpayment of this note, and all defenses on account of any extension or extensions of time for payment that may be given to them or any of them by the holder or holders of said note, or any renewal note for whole or part hereof, and do hereby relinquish the benefit of all exemption and insolvency laws.

10

## UNITED STATES VS. ONE FORD COUPE AUTOMOBILE

20

This note is the fourth of a series of four notes, bearing even date, and is given in accordance with the terms of a conditional sale contract existing between the same parties.

Negotiable and payable at ----- Bank -----

(City)

with exchange on New York or Chicago.

(Signed)

URTON MUNN.

21

In United States District Court

*Order sustaining motion to quash*

Filed April 14, 1924

[Title omitted.]

This cause coming on to be heard on this the 14th day of April, 1924, come the United States of America, by district attorney, cometh also the Garth Motor Company, a corporation, claimant to one Ford coupe automobile, motor number 4776501, Ala. license No. 10978, and the said claimant files herein a motion to quash the libel of information heretofore filed against said automobile by the United States of America in this action.

After argument of counsel and the court being fully advised and understanding said motion to quash, it is by the court.

Ordered, adjudged, and decreed that the said motion to quash be, and the same hereby is, sustained and the libel of information heretofore filed is hereby quashed and dismissed, to which action of court libellant then and there duly excepted.

It is further ordered, adjudged, and decreed that the said claimant be, and it hereby is, awarded the custody of the said aforesaid automobile.

It is further ordered, adjudged, and decreed by the court that the United States of America be taxed with the costs of this proceeding, and that all charges and fees for the storage of said automobile, since the same was taken possession of by the marshal, be paid by the Government.

This the 14th day of April, A. D. 1924.

W. I. GRUBB,

*District Judge.*

23

In United States District Court

*Replevy bond*

Filed April 14, 1924

[Title omitted.]

We, Garth Motor Company, agree to pay to the United States of America the sum of one hundred fifty and no/100 dollars, and for the payment of such sum we bind ourselves, and each of us, and each

of our heirs, executors, and administrators, jointly and severally; and as against this bond and all proceedings thereon we and each of us waive all rights of exemption allowed us under the constitution and laws of the State of Alabama or any other State of the United States.

Sealed with our seals and dated this the 27th day of December, 1923.

The condition of the above obligation is such that on the 11th day of August, 1923, under the provisions of the national prohibition act, there was seized the property described as follows, to wit: One Ford coupe automobile, motor number 4776501, used in violation of the law in transporting intoxicating liquors, such seizure being made by U. S. marshal, and possession being taken of such property under and by virtue of the provisions of section 26, Title II, of the said national prohibition act, and the above-bound Garth Motor Company having made claim to said property seized and asked for the return of the same to his possession, and said property being worth approximately one hundred fifty and 00/100 dollars:

Now, therefore, if the said Garth Motor Company, who claims to be the owner of the said seized property, shall well and safely keep said property and shall return the said property to the custody of the U. S. marshal for Northern District of Alabama, or such other of his agents as he may designate, in as good condition and free from harm or depreciation as when received, on the day of the trial to await the judgment of the court in said cause, then this bond to be void, otherwise to be in full force and effect.

In witness whereof we have hereunto set our hands and seals this the 27th day of December, 1923.

GARTH MOTOR COMPANY, INC.,  
W. W. GARTH, *President*.

Approved this 14th day of April, 1924.

W. I. GRUBB,  
*U. S. District Judge.*

25

In United States District Court

*Petition for appeal*

Filed April 14, 1924

[Title omitted.]

The United States of America, libellant in the above-styled cause, respectfully shows unto your honor that a decree was rendered and entered in the above-entitled cause on the 14th day of April, 1924, sustaining the motion to quash said libel of information and dismissing and quashing the said libel of information and awarding the

custody of said aforesaid automobile to the custody of the claimant herein.

26 And now the said United States of America feeling aggrieved by the said decree of this honorable court, rendered and entered in said cause as aforesaid, hereby petitions the court to enter an order in said cause requiring the said claimant to give bond for the release of said automobile to it and to allow your petitioner to prosecute an appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons set forth in the assignments of error filed herewith, and prays that this bill be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents and evidence upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, under the rules of said court in such case made and provided.

And your petitioner further shows that it is the United States of America, a Government sovereign, and should not be required to give bond or security for said appeal.

THE UNITED STATES OF AMERICA,

By C. B. KENNAMER,

*U. S. Attorney for Northern District of Alabama.*

27

In United States District Court

*Assignment of errors*

Filed April 14, 1924

[Title omitted.]

The United States of America, libellant in the above-styled proceedings, conceiving themselves aggrieved by the decree of this court rendered on the 14th day of April, 1924, sustaining the motion of the claimant to quash the libel of information filed herein, hereby files the following assignments of error on appeal from said decree of this court.

- (1) The court erred in sustaining the motion to quash the libel of information filed in this cause.
- 28 (2) The court erred in awarding the custody and possession of said automobile, sought to be condemned and forfeited, to the claimant, Garth Motor Company.
- (3) The court erred in dismissing the libel of information filed herein.

This the 14th day of April, 1924.

C. B. KENNAMER,  
*United States Attorney.*

Presented April 14, 1924

W. I. GRUBB, *Judge.*

29

## In United States District Court

*Order allowing appeal*

Filed April 14, 1924

[Title omitted.]

The United States of America, libellant in the above styled cause, having this day presented their petition for appeal from the decree of this court sustaining motion to quash the libel filed in said cause to the United States Circuit Court of Appeals for the Fifth Circuit, and that said automobile be released to the claimant only upon the execution of satisfactory bond therefor by the claimant, pending appeal, this court having fully and duly considered the same, it is hereby ordered that the said appeal be allowed, and that no bond or security be given by the United States for said appeal, and it is

30 further ordered by the court that the marshal of this court retain the possession and custody of said automobile until the execution of a bond in the sum of \$150.00 be executed by the claimant. Upon the execution and approval of such bond by this court, the marshal will deliver said automobile to the custody and possession of the claimant herein, as ordered in the order of this court sustaining the motion to quash the libel in this cause.

This the 14th day of April, A. D. 1924.

W. I. GRUBB,  
*District Judge.*

31

## In United States District Court

*Marshal's return*

Bond in the sum of \$150.00 in this case having been duly executed, as provided herein, and said bond having been approved by the court, the automobile described herein has been released to the Garth Motor Co., claimant herein, as directed in and by said order.

This 14th day of April, 1924.

THOS. J. KENNAMER,  
*U. S. Marshal.*  
By ROBT. A. MORRIS,  
*Deputy.*

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[Citation in usual form showing service on William S. Pritchard omitted in printing.]

33

## In United States District Court

*Clerk's certificate*

THE UNITED STATES OF AMERICA,  
*Northern District of Alabama.*

I, Chas. J. Allison, clerk of the District Court of the United States for the Northern District of Alabama, do hereby certify that



the foregoing pages numbered from one (1) to thirty-two (32), both inclusive, is a full, true, and correct transcript of the record in the matter of the United States of America, appellant, vs. One Ford Coupe Automobile, Motor No. 4776501, Alabama License No. 10978, Garth Motor Company, complainant, appellee, as fully as the same appears of record and on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Birmingham, in said district, on this the 19 day of June, A. D. 1924.

CHAS. J. ALLISON,  
*Clerk United States District Court,  
Northern District of Alabama.*

34 In United States Circuit Court of Appeals

*Argument and submission*

October 21, 1924

[Title omitted.]

On this day this cause was called, and after argument by Jim C. Smith, assistant United States attorney, for appellant, and John D. Higgins, Esq., for appellee, was submitted to the court.

35 In United States Circuit Court of Appeals, Fifth Circuit

No. 4372

THE UNITED STATES OF AMERICA, APPELLANT  
*versus*  
ONE FORD COUPE AUTOMOBILE, MOTOR No. 4776501, ALABAMA LICENSE  
No. 10978; Garth Motor Company, claimant, appellee

*Opinion*

Filed February 27, 1925

C. B. KENNAMER, U. S. Atty., JIM C. SMITH, Asst. U. S. Atty.,  
for appellant.

WM. S. PRITCHARD, JOHN D. HIGGINS, for appellee.

Before WALKER and BRYAN, Circuit Judges, and ESTES, District  
Judge.

BRYAN, Circuit Judge:

This is a libel of information under R. S. §3450 for the forfeiture of an automobile. The facts relied on by the Government are that one Killian had the automobile in his possession and was using it for the purpose of depositing or concealing therein liquor which had been illicitly distilled, with the intent to defraud the United States of its internal-revenue tax. The claimant, Garth Motor Company, had sold the automobile, but had retained title until

36 the purchase price should be paid, of which, at the time the libel was filed, there was an unpaid balance of \$125. It had no knowledge or cause to suspect that Killian was violating any law or would do so. Indeed, the sale was innocently made to another person. The District Court dismissed the libel.

The case is one at law, and should have been brought here for review by writ of error, instead of by appeal, as was done; but that is unimportant, and we proceed to the merits. Act of Sept. 6, 1916, 39 Stat. 727.

Counsel for the Government make an elaborate and exhaustive argument to establish the proposition that the tax on intoxicating liquors, although the manufacture thereof is prohibited by the national prohibition act, has never been replaced, or if so, that it has been reinstated by §5 of the act of Nov. 23, 1921, 42 Stat. 223, which provides "that all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the national prohibition act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions of such laws as are directly in conflict with any provision of the national prohibition act or of this act," etc. The proposition contended for finds support in the cases of *United States v. Yuginovich*, 256 U. S. 450, and *United States v. Statoff*, 260 U. S. 477, and may be conceded.

It is also contended that an automobile may be forfeited according to the provisions of §3450 when used for the deposit or concealment of liquor illicitly distilled and intended for use as a beverage, with intent to defraud the United States of the tax thereon, and

37 that §26 of the national prohibition act is not in conflict, because it only applies to an automobile used in the removal or transportation of liquor. Where a forfeiture occurs under §3450 the interest of an innocent owner or lien holder is lost. *United States v. Mincey*, 254 Fed. 287; *Logan v. United States*, 260 Fed. 746; *Goldsmith-Grant Co. v. United States*, 254 U. S. 505; whereas in cases falling under §26 of the national prohibition act the rights of innocent owners or lien holders are preserved. The position now taken by the Government in this case is that the interest of an innocent owner or lien holder may be forfeited if the automobile is standing still, but that such interest is protected if the automobile is in motion. That view could easily result in manifest injustice, for under it, as an illustration, the interest of an innocent holder of a lien on an automobile could be forfeited upon proof that while it was parked on a public street liquor was concealed in it by some one who had the intent to defraud the Government of its internal revenue tax.

Section 3450 is superseded by §26 of the national prohibition act in so far as there is a conflict between the two. *United States v. One Haynes Automobile*, 274 Fed. 926. The former section applies

to any goods or commodities upon which a tax is imposed, whereas the latter deals only with intoxicating liquor. An automobile actively engaged in transporting goods is at least as well adapted to facilitate violations of the revenue law as is one which is used merely for the deposit or concealment of goods. §2450, correctly construed, makes a distinction between an automobile standing still and one in motion, we are of opinion that §26 of the national prohibition act operates to supersede it in so far as the forfeiture of automobiles

and other vehicles, and air and water craft, used in the handling of liquor, is concerned. The latter section deals with

the subject of the unlawful possession as well as the unlawful transportation of intoxicating liquor. It prescribes such penalties on the subject with which it deals as were deemed adequate. Where the seizure is one within its terms, the seizing officer has no option or election as to the forfeiture proceeding to be pursued, but is required to follow the procedure prescribed in that section. Language used in that section indicates that the applicability of the forfeiture provision therein contained was not intended to be dependent upon the seized vehicle being actually engaged in transporting intoxicating liquor when the seizure was made. That the forfeiture provision therein contained was intended to be applicable when the seized vehicle, at the time of its seizure, was used as a means of possessing intoxicating liquor, whether such liquor was or was not then being actually transported, is indicated by the fact that that forfeiture provision is immediately associated with the provision contained in the second sentence of that section: "Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer, he shall take possession of the vehicle and team or automobile, boat, air, or water craft, or any other conveyance, and shall arrest any person in charge thereof." The just-quoted language, in the connection in which it is used, is inconsistent with the existence of an intention to deal only with intoxicating liquors while being actually transported. It can not well be inferred that an automobile which was seized while it was being used as a means of possessing intoxicating liquors was intended to be forfeitable otherwise than

under the provision of §26 of the national prohibition act if the transaction also involved the feature of concealing such liquor. A special forfeiture provision being applicable in the case of a vehicle used in possessing intoxicating liquor, in such case another forfeiture provision applicable generally to anything used, with intent to defraud the United States of a tax, for the deposit or concealment of the subject of the tax, can not be resorted to.

The conclusion is that Congress, when it enacted the national prohibition act, considered the forfeiture provision of §3450, which failed to protect an innocent interest in the thing forfeited, too severe, and therefore provided a less drastic penalty which safeguards such interest.

The judgment is affirmed.

40

## In United States Circuit Court of Appeals

*Judgment*

Feb. 27, 1925

[Title omitted.]

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Alabama and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

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## In United States Circuit Court of Appeals

*Clerk's certificate*

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 34 to 40 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 4372, wherein the United States of America is appellant and Garth Motor Company, claimant, etc., is appellee, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 33 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals at my office in the city of New Orleans, Louisiana, in the fifth circuit, this 11th day of April, A. D. 1925.

[SEAL.]

FRANK H. MORTIMER,  
*Clerk of the United States Circuit  
Court of Appeals, Fifth Circuit.*

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## Supreme Court of the United States

*Order allowing certiorari*

Filed June 1, 1925

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the

proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

It is further ordered that this cause be, and the same is hereby, advanced and assigned for argument on the summary docket on Monday, November 2d next, after the cases heretofore assigned for that day.

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